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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,704	01/29/2004	Mark E. Benden	12041.0085.NPUS00NPEK:085	5652

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EXAMINER


RAMIREZ, RAMON O

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

 Office Action Summary	Application No. 10/767,704	Applicant(s) BENDEN ET AL.	
	Examiner RAMON O. RAMIREZ	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/29/04</u> . | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

This is the first Office Action corresponding to original filing. The application contains 26 claims.

Information Disclosure Statement

Receipt is acknowledged of Information Disclosure Statement, which has been reviewed by the Examiner.

Specification

The disclosure is objected to because of the following informalities: on page 10, line 6, "10" apparently should be - - 3 - - (please refer to line 12), on page 12, line 7, the mounting holes are not found in the drawings, on page 13, the statement made in paragraph 43 is not understood, how can the device maintain a desired position without a locking means?, on page 16, line 5 from the bottom, the "spring 540" is not found in the drawings, and on page 20, "10" apparently should be - - 3 - -.

Appropriate correction is required.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "H" and "580". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in

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reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

Claim 8 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The spring loaded pin recited in the claim appears to lack antecedent in the specification.

Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 1, line 9 has no proper antecedent for “the predetermined height”, also the clause “functionally associated” and “slidably associated” are vague (Applicant should consider changing them to more narrow clauses like attached).

Claim 4 ends with a comma (,); if something missing from the claim.

Claim 5 appears to have the term first leg and second leg inverted. As understood, member (410) is pivotally attached to the second leg (150), and the post (140) is on the first leg (140). See Fig 4.

Claim 6, line 3, lacks antecedent for “the channel”.

Claim 10, line 1, lacks antecedent for “the locking means”.

Claim 22, line 2, lacks antecedent for “the desk”, and in line 5 lacks antecedent for “the base tray”. Further, claim 22 is reciting the user as part of the combination. Functional language, like the clause “adapted to” should be used.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 9, 19, 24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Jerick (Pat No 5,581,023).

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The patent to Jerick discloses an adjustable device comprising a lower tray (55) and upper tray (56), four legs (62-65) having one end attached (functionally associated) to the upper tray, and the other end slidably attached (slidably associated) to the lower tray; the trays being substantially identical, wherein the height of the device can be adjusted by the user.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jerick.

With respect to claim 2, the patent to Jerick can support a keyboard tray on its upper tray.

With respect to claim 26, the use of pneumatic means in lieu of manual one is seen a mechanical expedient to facilitate the use of the device.

Claims 3, 4 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jerick in view of Ehrichs.

The patent to Ehrichs shows another adjustable device having legs pivotally attached to an upper member. It would have been obvious to one skilled in the art at the time the

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invention was made to have provided the legs shown in Jerick's device pivotally attached to the upper tray to reduce manufacturing costs.

Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jerick in view of Congleton (Pat No 6,296,312).

The patent to Congleton shows a locking means as the one recited here. It would have been obvious to one skilled in the art at the time the invention was made to have provided the device shown by Jerick with a locking means as the one shown by Congleton to lock the device in a desired height.

Allowable Subject Matter

Claims 5-8, and 13-18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kobayashi (4,296,694), Kohl et al. (6,554,359), Heckert (6,705,238) and Hill et al. (2004/0144906) show other devices of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAMON O. RAMIREZ whose telephone number is

(703) 308-0748 (after April 7, 2005, the phone would be (571) 272-6821). The examiner can normally be reached on MONDAY-FRIDAY, IST FRIDAY OFF.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LESLIE BRAUN can be reached on (703) 308-2156 (after April 7, 2005, the phone would be (571) 272-6815).

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A shortened period for response to this Office Action expires **THREE MONTHS**
from the mailing date of this action.


RAMON O. RAMIREZ
Primary Examiner
Art Unit 3632

ROR
March 2, 2005